

BRITISH COLUMBIA LABOUR RELATIONS BOARD

KAMLOOPS SYMPHONY SOCIETY

(the "Employer")

-and-

MUSICIANS' ASSOCIATION LOCAL 145, AMERICAN
FEDERATION OF MUSICIANS

(the "Union")

PANEL:	Jan O'Brien, Vice-Chair
APPEARANCES:	Matthew Westphal and Chris Martin, for the Employer Maureen Headley, for the Union
CASE NO.:	46184
DATE OF HEARING:	September 17 and 18, 2001
DATE OF ORAL DECISION:	September 18, 2001
DATE DECISION PUBLISHED:	September 19, 2001

DECISION OF THE BOARD

The following reasons were rendered on September 18, 2001 in the context of an expedited Part 5 application. Further to the Board's memorandum to the labour relations community on July 9, 1997 regarding oral decisions, at the time of rendering the reasons I reserved the right to edit the decision should a request for reasons be made. That right has been exercised sparingly in the following which basically remains a transcription of the oral reasons. There are no substantive differences between the oral and written reasons.

ORAL REASONS

I. **NATURE OF THE APPLICATION**

1 The Employer applies under Sections 133 and 143 of the *Labour Relations Code* for an order declaring that the Union has violated Sections 59 and 60 of the Code by instructing all bargaining unit employees not to report to rehearsal unless the applicable tariff of fees is paid.

II. **BACKGROUND**

2 The Union notified the Employer by letter on September 5, 2001 that it had instructed the bargaining unit employees, also known as the "core members" of the Kamloops Symphony Orchestra ("KSO"), that they should not report to rehearsal unless the applicable tariff of fees was paid. Subsequently, three of six bargaining unit employees did not attend rehearsal on September 5 and 12, 2001.

3 In the same letter, the Union also told the Employer that it was notifying all extra musicians that are sometimes used by the KSO that the tariff of fees must be adhered to.

4 The Union was certified on November 10, 2000. No collective agreement has been reached. The Union applied to be decertified on September 17, 2001.

5 The hearing began on September 17, 2001 and was adjourned at my direction to provide the parties with an opportunity to settle the matter. When the hearing resumed on September 18, 2001, the Union requested an adjournment so that it could make written submissions. At the same time, the Union indicated its intention to withdraw its direction to the core employees regarding attendance at rehearsal and the tariff of fees. The Union further indicated its intention to not discipline any members who reported to

work while the Union's direction was in place. In addition, the Union is prepared to encourage core employees to attend rehearsals and a concert planned for September 29, 2001.

6 The Union advises it will abide by this commitment until the Board issues a decision regarding the Employer's application or an agreement is reached by the parties. If the Employer alleges any further illegal strike activity, the Union also offered to return to the Board within 24 hours of receiving notice.

7 In these circumstances, the Union submits there is no need for the hearing to continue on an expedited basis under Part 5 of the Code. The Union requests instead that it be given the opportunity to make extensive written submissions dealing with history of the Union and the industry practices regarding the tariff of fees. If necessary, *viva voce* evidence may be called at a continuation of the hearing.

8 The Employer opposes the Union's request to adjourn the expedited hearing. The Employer characterizes the Union's application as a "stalling tactic". The Employer states that the issues are not complex because they deal only with the refusal of three core employees to work for the last two weeks.

9 Further, the Employer plans to bring an application under Section 70 of the Code. The Employer submits that a Section 70 application would be the more appropriate venue to explore broad evidentiary issues relating to the Union's history and the tariff of fees. In addition, the Employer submits that if the Union is decertified, this Part 5 application could become moot and that would lead to an abuse of process.

III. ANALYSIS AND DECISION

10 The Board's usual policy is to deal expeditiously only with conduct that is of an ongoing nature: *Citic B.C. Inc. and Power Consolidated (China) Pulp Inc., a joint venture carrying on business under the firm-name Celgar Pulp Company*, BCLRB No. B29/97 ("Celgar"); *Fletcher Challenge Canada Limited*, BCLRB No. B288/99. As stated in Celgar:

If the alleged illegal conduct is not ongoing, the Board will adjourn the application generally (but will expedite the matters should the alleged illegal conduct occur again). (para. 20)

11 A withdrawal of the Union's instructions to the core employees and encouragement to the core employees to attend rehearsals and the upcoming concert provides the primary remedy the Employer is seeking with its application. There should be no impediment to rehearsals resuming and the concert proceeding.

12 The Employer is concerned that its application will become moot if the matter is adjourned and the Union becomes decertified. I am not certain how that will prejudice the Employer except possibly in the pursuit of damages. In my view, that purpose does not justify continuing the hearing on an expeditious basis.

13 I will grant the adjournment and seek written submissions. Should the Employer apply under Section 70 of the Code, it is free to seek to consolidate that application with this case.

IV. CONCLUSION

14 I am satisfied that this case does not justify a departure from the Board's practice and policy of adjourning Part 5 applications if the alleged conduct is not ongoing. Accordingly, the Union's application to adjourn the matter is granted subject to the following conditions:

1. Any future applications by the Employer alleging conduct of the same nature as complained of in this case will be dealt with expeditiously by way of a hearing being scheduled within six hours of receipt of the application.
2. The Union will inform the bargaining unit members by letter and verbally that the direction to not attend rehearsals until the applicable tariff of fees is paid is withdrawn.
3. The Union will encourage the bargaining unit members by letter and verbally to attend rehearsals and the September 29, 2001 concert.
4. The Union will abide by its undertaking to not discipline members who attended rehearsals on September 5 and 12, 2001.
5. The terms of this decision are in force until the Board renders a final decision on this matter or the parties reach another agreement.

15 I remain seized should the parties encounter any difficulties implementing this decision.

LABOUR RELATIONS BOARD

"JAN O'BRIEN"

JAN O'BRIEN
VICE-CHAIR